United States Court of Appeals

for the Second Circuit

BRIEF FOR APPELLEE

Original 76-6003

To be argued by
ELLEN KRAMER SAWYER

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Docket No. 76-6003

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, and
THE CITY OF NEW YORK,
Plaintiffs-Appellees,
-against-
LOCAL 638... LOCAL 28 OF THE SHEET METAL
WORKERS' INTERNATIONAL ASSOCIATION, LOCAL
28 JOINT APPRENTICESHIP COMMITTEE,
Defendants-Appellants,
SHEET METAL AND AIR-CONDITIONING CONTRACTORS'
ASSOCIATION OF NEW YORK CITY, INC., etc.
Defendants.

LOCAL 28,
Third Party Plaintiff,
-against-
NEW YORK STATE DIVISION OF HUMAN RIGHTS,
Third Party Defendant.

LOCAL 28 JOINT APPRENTICESHIP COMMITTEE,
Fourth-Party Plaintiff,
-against-
NEW YORK STATE DIVISION OF HUMAN RIGHTS,
Fourth-Party Defendant.

On Appeal From The United States District Court
For The Southern District of New York

BRIEF OF THE APPELLEE CITY OF NEW YORK

W. BERNARD RICHLAND,
Corporation Counsel of
the City of New York,
Attorney for the Plaintiff-
Appellee
City of New York
Municipal Building,
New York, N.Y. 10007
566-2197

ELLEN KRAMER SAWYER,
GERALD J. DUNBAR,
of Counsel.

UNITED STATES COURT OF APPEALS
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PRELIMINARY STATEMENT

By Decision and Order entered July 18, 1975 and Order and Judgment entered August 29, 1975, the District Court (WERKER, J.), found that the Sheet Metal Worker's International Association, Local Union No. 28 (hereinafter Local 28 or Union) and the Local 28 Joint Apprenticeship Committee (hereinafter the JAC) had used various discriminatory practices which prevented non-

whites from achieving union membership. The District Court appointed an Administrator to administer an Affirmative Action Program designed to reach the Court ordered goal of 29% non-white combined union and apprenticeship program membership to be met by July 1, 1981.

Thereafter Local 28 and the Union Trustees of the JAC appealed the Order and Judgment. On March 8, 1976 this Court (Feinberg, Smith and Ward) affirmed the finding of discrimination, the appointment of an Administrator and the direction to the Administrator and the parties to formulate an affirmative action program designed to reach the 29% non-white membership goal. EEOC v. Local 28, Sheet Metal Workers, 532 F. 2d 821 (2d Cir. 1976).

During the pendency of the above appeal, the Affirmative Action Program and Order (AAPO) formulated by the Administrator and the parties was approved by order of the District Court entered November 25, 1975. Local 28 and the Union Trustees of the JAC then appealed certain provisions of the AAPO. 2d Cir. Dkt. 76-6003.

Subsequently the plaintiff-appellees and the State Division of Human Rights sought and received an Order of Remand on October 18, 1976 from this Court, so that proposed revisions of the AAPO could be considered by the District Court. Hearings were held before the Administrator who submitted his report to

the District Court on December 30, 1976. On January 18, 1977 the District Court entered an Order adopting the Administrator's Report and approving the revised AAPO. It is from this Order that Local 28 and the Union Trustees appeal.

QUESTIONS PRESENTED

Whether the District Court erred in approving provisions of the AAPO directing:*

(1) The establishment of a tripartite board, composed of representatives of the plaintiffs, Union and Administrator, whose purpose is to establish non-discriminatory criteria for union membership.

(2) The establishment of a program for direct admission into Local 28 on the basis of adequate four year sheet metal work experience as evaluated by the tripartite board.

(3) The possible reduction in initiation fees and certain residence requirements for applicants to Local 28.

FACTS

We will set forth here only the factual developments necessary to place the present appeal in proper context. The full factual background of this

*For our response to the objections directed to those AAPO provisions concerning the induction by the JAC of a specified number of apprentices and the formal employment referral system of apprentices, we rely on the Administrator's Report which was adopted by the District Court (Supplement to the Second Joint Appendix, 1789-1799).

litigation is well known to the Court and the parties and need not be set out again in detail.

REVISION OF THE AAPO:

The presence of various factors prompted the plaintiff-appellee EEOC to seek certain revisions of the AAPO in November 1976. First, the economic conditions in the New York City construction industry had resulted in a drastically reduced amount of sheet metal work and a concommitant decline in available sheet metal jobs.* Second, the decision of this Court in affirming as modified the District Court's original decision had eliminated in some instances the use of racially-based ratios in the selection of apprentice candidates. By doing so, the decision raised the possibility that more apprentices might have to be admitted to the Local 28 apprentice program in order to achieve the non-white population of 29% ordered by this Court. Third, given the severely weakened economic condition of the industry, certain long-standing work practices of Local 28 and JAC were simply no longer appropriate if Local 28 and the JAC were to meet the requirements imposed by their affirmative action obligations.

As a result of these factors, either individually or in combination, certain provisions of the

*At the time of the EEOC's motion, various reports from Local 28 and the JAC indicated that about 1200 journeymen members of Local 28 were employed full time. There was no data available to plaintiffs as to the number of journeymen members unemployed who were actively looking for work.

original AAPO did not reflect present conditions in the sheet metal industry and were, in some respects, virtually unenforceable.

At the time of the EEOC's motion, November 1976, more than 16 months after the District Court's Decision and Order, Local 28 had a membership of approximately 2,847 journeymen and 80 apprentices. The non-white population in this group was 154 or 5.26%. (Report of Local 28, dated September 3, 1976). On July 1, 1974 Local 28 had an approximate population of 3670 journeymen and 286 apprentices with a non-white population of 3.98%. (EEOC Post Trial Memorandum, 10). Between July and November 1974 Local 28 admitted about 60 additional apprentices of whom 34 were non-white (Id), bringing the non-white population to around 4.7%.

These figures illustrate all too conclusively there has been little progress toward attaining the 29% non-white membership goal affirmed by this Court.* In fact, the actual number of non-white journeymen and apprentices has decreased by more than 15% in two years.

The AAPO was developed in the latter part of 1975 to establish procedures for the entry of non-whites into the union. Essentially, the AAPO focused on three primary means of entrance: apprentice aptitude tests (¶21-36; A1386 - 1394); journeymen tests (¶5-14; A 1375-

*Under the revised AAPO, this goal is now to be attained by July 1, 1982, one year later than under the first AAPO (Supplement to the Second Joint Appendix, 1836).

1382); and entry to journeymen membership through appropriate evidence of the requisite sheet metal experience (¶15; A 1382 - 1384).*

Historically, the apprentice program has been the major avenue for entry into Local 28. The apprentice program is reputed to be a well-run and effective vehicle for the training of sheet metal workers. The AAPO was designed to retain the apprentice program in substantially its existing form and merely require a validated test as the criteria for the selection of apprentices. It was expected that through the selection of apprentices and the operation of a selection ratio based on race that approximately 100 non-white apprentices a year could be entered on the path toward journeyman membership in Local 28. As pointed out by the Administrator in his report dated April 31, 1976 (A 1474-1482) only 53 apprentices (about half of whom were non-white) have been indentured. As of the time of the EEOC's motion to revise the AAPO, no new apprentices had been selected and no validated test had been created for their selection.

At the time of the AAPO revisions, the apprentice program had only 80 members (including 35 non-whites) and some of those had not been provided employment. That level of 80 was the lowest number of apprentices since at least 1960 (the earliest date for

*Numbers in parentheses prefixed by the letter "A" refer to the consecutively numbered pages of the successive supplemental appendices.

which statistics are available) and according to the report from Local 28 equaled only 7.4% of the working journeymen and only 2.8% of the journeymen work force.

A second avenue of entrance into Local 28 is through a journeyman's test. Under the AAPO, a test was administered in October 1975 at which time 36 persons passed, including 17 non-whites. None of the non-whites has entered into journeymen membership since all exercised their option under the AAPO to defer entrance (Administrator's Report, A 1474 - 1482). A new journeyman's test has not been validated.

The third avenue of entry admission through proof of the requisite experience has not been put into effect because an appropriate examining board has not yet been selected.

If this Court sustains the objections of Local 28 and the JAC to the four year experience direct admission program under the jurisdiction of the impartial tripartite board, the provisions governing the induction and employment referral of apprentices and the regulations governing fee reduction and residency, the affirmative action program designed for this recalcitrant union will become entirely emasculated. We submit that this Court ought not to sanction such a result in view of the Court's own finding that Local 28 has "consistently and egregiously" acted in "bad faith" in not complying with court orders dating to 1964 directing the elimination

of discrimination, as well as the Court's conclusion that Local 28's behavior "would be even worse had it not been for the rather minor concessions it has grudgingly made under court order." EEOC v. Local 28, Sheet Metal Workers, 532 F. 2d 821, 825, 826, 827 (2d Cir. 1976).

TRIPARTITE BOARD:

The original and revised AAPO, paragraph 10, provide (A 1809):

> "The 'hands-on' journeyman's test shall be graded by a Board of Examiners consisting of three members knowledgeable in sheet metal. Said Board shall be comprised of a representative chosen by Local 28, a representative chosen by the Administrator, and a representative chosen by the plaintiffs and the State Division".

This provision is objected to by Local 28 as directing the "bumping" of the adequate and impartial Local 28 Examining Board and as an unwarranted intrusion into internal union affairs. That these objections are meritless is apparent from the long history of "testing" practices by the Union and the JAC.

The present Local 28 Examining Board conducted journeymen tests in 1968 and 1969. Both tests, the only two journeyman examinations administered between 1959 and entry of the Order and Judgment below on August 29, 1975, were conducted under the constraint of arbitration awards won by the employers' Contractors' Association to force the Union to increase its manpower (A973-992). The only other journeyman's test

conducted by that Board was the court ordered test of October 1975.

From the 1968 test, ordered by Arbitrator Theodore Kheel for the purpose of admitting 100 new journeymen, only 24 men (all white) were admitted from 330 applicants, of whom about 15% were non-white (A94, 163). The test had been composed by Robert Schluter, the JAC coordinator and chairman of the Examining Board, but never validated according to the EEOC Guidelines (A156-166). The District Court concluded (A94-95):

> "The above statistics would seem to indicate that the test served more as an obstacle to, than a vehicle for, the admission of new journeymen. Indeed, one of the candidates for admission, then a fourth-year apprentice in Local 400, testified that 'the test was pretty far out. In other words, you had to have more or less a college degree to really do anything on that test.' (Tr. 1543)... the exam clearly had an adverse impact on non-whites, and as such, without validation, was violative of Title VII. See Griggs v. Duke Power Co., 401 U.S. at 430."

As to the 1969 examination, given after the second arbitration order, the District Court stated (A95-96):

> "According to Chairman Schluter the exam had been restructured since 1968 so as to eliminate questions involving mathematical concepts unrelated to sheet metal work, and replace them with questions of 'shop math'. As a result, 14 non-whites and 61 whites successfully passed the journeyman test and were admitted to the union. Because of the Local 28's failure to keep records as to the number of

> whites and non-whites tested it is not possible to determine whether this exam also had an adverse impact on non-whites."

As to the October 11, 1975 journeymen's test conducted by that Board, the District Court found that the simultaneous picketing of several test sites by Local 28 members led by several chief union officers, who carried signs conveying messages of hostility towards the court order, did not constitute compliance with its order directing the institution of an affirmative action program (A1617-1624). Other complaints about the atmosphere of the October 11th test were voiced by the Recruitment and Training Program (A1585-6).

Further, Local 28 gives the misleading impression that the Board oversaw the October 11th test as an autonomous body. Local 28 fails to note that all decisions relating to that test were reviewable by a sheet metal expert appointed by the Administrator and that the expert himself graded all the tests. Final test scores were arrived at only with his concurrence.

FOUR YEAR EXPERIENCE ENTRY:

The original and revised AAPO (paragraph 12) provide that a person who has had four years of sheet metal experience may gain direct entry into Local 28 if he can (A1810):

> "establish to the satisfaction of a majority of (the tripartite board) that the applicant has the requisite sheet metal experience."

Additionally, an applicant must be over 18, physically fit, a citizen or lawful permanent resident entitled to work in the United States and meet certain residency requirements.

OTHER UNION ENTRY PROVISIONS:

Local 28 here appeals sections 13 and 14 of the revised AAPO (A 1843-1845) which establish the right of non-white persons to apply to the Local 28 Executive Board, and if unsuccessful to the Administrator for a reduction in initiation fees pursuant to the conditions listed in Section 22(d) of the Order and Judgment (A144). That provision provides:

> "Under terms and conditions to be established in the program or by the Administrator as he may direct that non-whites admitted to journeyman status in Local 28 through the procedures set forth in paragraphs 21(a), 21(b), 22(b) and 22(c) supra, shall pay an initiation in an amount not to exceed the amount of the lowest initiation fee charged to any white individual who was admitted to membership at the time the non-white would have been eligible for membership in Local 28 absent Local 28's and/or JAC's discrimination, including discriminatory admission requirements, against non-whites. In addition, the Administrator may direct that payment by non-whites of the aforesaid initiation fees shall commence with their employment with a Local 28 contractor and shall be paid in such monthly installments as determined by the Administrator. Neither the amount of the initiation fee to be paid by non-whites under this paragraph, nor the installment payment authorized hereunder, shall in any way

> affect the journeyman status, including but not limited to the right to secure employment with a Local 28 contractor, of the non-whites to whom this provision applies.

Local 28 also appeals Section 12 of the revised AAPO (A1810), regarding residence requirements for applicants to Local 28.

The provision provides that applicants must be residents of New York City, or the counties of Nassau (N.Y.), Suffolk (N.Y.), Westchester (N.Y.), Bergen (N.J.), Passaic (N.J.), Essex (N.J.), Union (N.J.) or Hudson (N.J.).

POINT I

THE ESTABLISHMENT OF A TRIPARTITE BOARD OF EXAMINERS IS NECESSARY AND PROPER.

The AAPO does not mandate what membership of the Tripartite Board is to be other than to direct that the members be knowledgeable in sheet metal work and that each party and the Administrator make one appointment. However, the original and revised AAPO are "color blind" as to the make-up of the Tripartite Board. Thus, Local 28's contention that the Tripartite Board represents some type of racial "bumping" as in reverse discrimination is totally groundless.

The concept of "identifiable reverse discrimination", (Kirkland v. New York State Department of Correctional Services, 520 F. 2d 420 [22d Cir. 1975]), has little application to these facts. Of the Tripartite Board's three functions, two, the grading of apprenticeship examinations and the administration of the four year direct access route, are new, deriving directly from the AAPO. But for the directives of the AAPO, there would be no grading of apprenticeship exams because, at Local 28's insistence, the JAC has refused to identure new apprentice classes since October 1972. See Stipulation of Facts ¶51, A1073. Further, the four year experience entry route was born under the AAPO and, thus, was never under the jurisdiction of the Local 28 Examining Board.

As to the only function involved here which was exercised by the Local 28 Examining Board, the grading of the journeyman test, Local 28's contention that such function should not be transferred to the AAPO's Tripartite Board cannot be sustained given the finding by the District Court of the discriminatory impact of the tests administered by the Local 28 Examining Board. Griggs v. Duke Power Co. 401 U.S. 424 (1971). In view of the discriminatory impact of the tests, as well as the peculiar circumstances surrounding their administration, the presumption arises that the all-white composition of the Board is itself discriminatory, Cypress v. Newport News General and Nonsectarian Hosp. Assn., 375 F. 2d 648, 655 (4th Cir. 1967); Hawkins v. North Carolina Dental Society, 355 F. 2d 718, 723-724 (4th Cir. 1966); Meredith v. Fair, 298 F. 2d 696, 702 (5th Cir. 1962), cert. den. 371 U.S. 828 (1962), and violative of Title VII. Stamps v. Detroit Edison Co., 365 F. Supp. 87 (E.D. Mich. 1973), affd. 515 F. 2d 301 (6th Cir. 1975); Rowe v. General Motors Corp., 457 F. 2d 348, 359 (5th Cir. 1972).

Local 28 has not put forth any argument for maintaining the all-white Examining Board, despite its long history of discriminatory practices, on the only possibly defensible ground of legitimate business necessity. Rowe v. General Motors, 457 F. 2d 348, 354 (5th Cir. 1972).

Nor is the specific remedy here novel. This Court, in dealing with another recalcitrant union, has sanctioned a prophylactic measure similar to the one approved here by the District Court. Rios v. Enterprise Association

Steamfitters Local 638, 501 F. 2d 622 (2d Cir. 1974).*

*In Rios, the District Court ordered the establishment of an examining board, consisting of the Administrator (or his representative), a representative of the Union, and an individual chosen by the Administrator from a minority referral source, to supervise and administer practical exams for direct admission into the Union.

POINT II

THE FOUR YEAR EXPERIENCE METHOD OF ENTRY IS REASONABLE AND PROPER.

To date Local 28 and the JAC have failed to develop a journeyman test that has been approved by the Administrator as job-related or content validated in accordance with their burden under both the Griggs rule and Albemarle Paper Co. v. Moody, 422 US 405 (1975). However, the establishment of such a test would not invalidate the four year experience method of entry. As observed by the Administrator with regard to the first journeyman test (1784):

> "Even Local 28 recognizes that some persons may have difficulty in a testing situation and that, although the applicant is qualified, they may fail the test. [Tr. Bogen 74.] At the conclusion of the October 1975 journeyman test the Administrator was apprised of allegations by non-whites that the non-whites were intimidated by the test environment. That environment included some minor picketing of test sites by a few union members objecting to the Court's order, test sites located in a white working class neighborhood, picture taking of applicants by the white JAC coordinator, and the fact that each test site was being overseen by whites."

It is important to note that under the revised AAPO (paragraph 5) the "hands on" journeyman test will be given "no later than" March 1, 1978 and yearly thereafter, presumably to allow time for the development of a validated test. There is no apparent reason, especially given the Union and the JAC's long history of exclusionary practices, why a qualified person should have to wait at least a year,

both before the first test or between tests, for union admission and, tnus, employment. Further, direct union entry via this route cannot be obtained without the applicant being able to satisfy a majority of the tripartite board that he or she has the requisite sheet metal experience from which it can be fairly inferred that the applicant can perform journeyman work.

Local 28 contends that where there is a validated test no other method of entry is permissible. The union also contends that if such a method is directed toward the admission of non-whites, who were not themselves the victims of past discrimination, it is reverse discrimination.

Nothing in Griggs or Albemarle supports Local 28's position. What is prohibited by these cases is the use of any test which fails to "measure the person for the job and not the person in the abstract". Griggs, 401 U.S. at 436. There is no prohibition in either case of the use of alternative selection devices to the pen and pencil test as long as those devices are racially neutral and job-related. Nor is there any insistance that when there is a validated pen and pencil test that be the sole measure of assessment of qualifications.

Finally, we point out that this method can be used to benefit all qualified applicants, white and non-white (AAPO, paragraph 43, A1861). The method has nothing to do with the evils of "bumping" or improper interferences with seniority, but is designed solely to expand union

membership by the admission of experienced and qualified journeymen.*

It would appear that this Court has already sanctioned this method of "direct qualification and admission" in meeting the 29% membership goal as "most appropriate" on the ground that the eligible persons shall undoubtedly be those "who have felt the brunt of the union's past discriminatory practices." EEOC v. Local 28, Sheet Metal Workers, 532 F. 2d at 832.

*For the same reasons, the advanced placement program for experienced apprentices should also be sustained (AAPO ¶29-32, A1852-1854).

POINT III

THE PROVISIONS RELATING TO INITIATION FEE AND RESIDENCE OF APPLICANTS ARE REASONABLE AND PROPER.

The AAPO provides for a method by which a non-white may request a reduction in initiation fee. This provision is merely the procedure to be used in the implementation of Section 22(d) of the Order and Judgment (A144). In the previous appeal, Local 28 did not contest this provision, which, as part of the Order and Judgment, was affirmed by this Court. EEOC v. Local 28, Sheet Metal Workers, 532 F. 2d 821 (2d Cir. 1976). We question whether Local 28 can, at this late date, have this Court upset what has become the law of the case.

In any event, Local 28 advances no substantial reason why the fee reduction provision should be defeated. Even if this provision were not the law of the case, it in no way creates that impermissible preference or "identifiable reverse discrimination" decried by this Court. Kirkland v. New York State Department of Correctional Services, 520 F. 2d 420, 427 (2d Cir. 1975). Here there is no identifiable class of white persons who are "discriminated" against. The reduction in initiation fee applies only to those non-whites who would have been eligible for membership in Local 28, absent Local 28 and the JAC's discriminatory conduct. The reduction is not available to every non-white who now seeks union membership. This is a proper

remedy extended to a specific class of non-whites to eliminate the vestiges of past discrimination. Rios v. Enterprise Association Steamfitters, Local 638, 501 F. 2d 622, 629 (2d Cir. 1974). It also clearly comports with the stated purpose of the AAPO (A105):

> "to place eligible non-whites in the position they would have enjoyed had there been no discrimination."

The AAPO, paragraph 12(a), (A1810), sets the residency requirements for admission into Local 28 at New York City, suburbs and northeastern New Jersey. There is no doubt that the current members of Local 28 live in all the enumerated counties. It is a proper exercise of the equitable power of the District court to allow applicants to be drawn from a wide area to help the program fulfill its goals of 29% non-white membership. This proposal cannot but raise the quality and quantity of applicants to Local 28 and as such should be approved. New members of Local 28 should reside in an area coextensive with the residences of current Local 28 members and not be forced to meet residency requirements that no other member of Local 28 has heretofor met.

CONCLUSION

THE ORDER OF THE DISTRICT COURT APPROVING THE REVISED AFFIRMATIVE ACTION PROGRAM AND ORDER SHOULD BE AFFIRMED, WITH COSTS.

March 8, 1977.

Respectfully submitted,

W. BERNARD RICHLAND,
Corporation Counsel,
Attorney for Appellee City
of New York

ELLEN KRAMER SAWYER,
GERALD J. DUNBAR,
of Counsel.

AFFIDAVIT OF SERVICE ON ATTORNEY BY MAIL

State of New York, County of New York, ss.:

JAMES BURNS being duly sworn, says that on the 14 day of MAR. 1977, he served the annexed BRIEF-OF-N.Y.C. upon DAVID ROFF Esq., the attorney for the ADMINISTRATOR herein by depositing a copy of the same, inclosed in a postpaid wrapper in a post office box situated at Chambers and Centre Streets, in the Borough of Manhattan, City of New York, regularly maintained by the government of the United States in said city directed to the said attorney at No. 49-51 CHAMBERS ST. SUITE 220 in the Borough of MAN H, City of New York, being the address within the State theretofore designated by him for that purpose.

Sworn to before me, this
14 day of MAR. 1977

BRUCE S. GARNER
Commissioner of Deeds
City of New York - No. 4-1786
Commission Expires May 1, 1978

James Burns

Bruce Garner

Form 323-50M-701067(75) 346

AFFIDAVIT OF SERVICE ON ATTORNEY BY MAIL

State of New York, County of New York, ss.:

JAMES BURNS being duly sworn, says that on the 14 day of MARCH 1977, he served the annexed BRIEF-OF-N.Y.C. upon Rosenthal & GOLDHABER Esq., the attorney for the OPPOSING ATTY herein by depositing a copy of the same, inclosed in a postpaid wrapper in a post office box situated at Chambers and Centre Streets, in the Borough of Manhattan, City of New York, regularly maintained by the government of the United States in said city directed to the said attorney at No. 44 Court St. in the Borough of Brooklyn, City of New York, being the address within the State theretofore designated by him for that purpose.

Sworn to before me, this
14 day of MARCH 1977

BRUCE S. GARNER
Commissioner of Deeds
City of New York - No. 4-1786
Commission Expires May 1, 1978

James Burns

Bruce Garner

Form 323-50M-701067(75) 346

AFFIDAVIT OF SERVICE ON ATTORNEY BY MAIL

State of New York, County of New York, ss.:

BRUCE GARNER being duly sworn, says that on the 14 day of MAR. 1977, he served the annexed BRIEF upon GERALD J. DUNBAR Esq., the attorney for the herein by depositing a copy of the same, inclosed in a postpaid wrapper in a post office box situated at Chambers and Centre Streets, in the Borough of Manhattan, City of New York, regularly maintained by the government of the United States in said city directed to the said attorney at No. 38 PARK ROW in the Borough of MAN'H, City of New York, being the address within the State theretofore designated by him for that purpose.

Sworn to before me, this
14 day of MAR. 1977

JAMES BURNS
Commissioner of Deeds
City of New York - No. 4-1787
Commission Expires May 1, 1978

James Burns

Bruce Garner

Form 323-50M-701067(75) 346

AFFIDAVIT OF SERVICE ON ATTORNEY BY MAIL

State of New York, County of New York, ss.:

JAMES BURNS being duly sworn, says that on the 14 day of MAR. 1977, he served the annexed BRIEF-OF N.Y.C. upon LOUIS J. LEFKOWITZ Esq., the attorney for the OPPOSING ATTY herein by depositing a copy of the same, inclosed in a postpaid wrapper in a post office box situated at Chambers and Centre Streets, in the Borough of Manhattan, City of New York, regularly maintained by the government of the United States in said city directed to the said attorney at No. 2 - W. 7. C. in the Borough of MAN'H, City of New York, being the address within the State theretofore designated by him for that purpose.

Sworn to before me, this
14 day of MAR. 1977

BRUCE S. GARNER
Commissioner of Deeds
City of New York - No. 4-1786
Commission Expires May 1, 1978

James Burns

Bruce Garner

Form 323-50M-701067(75) 346

AFFIDAVIT OF SERVICE ON ATTORNEY BY MAIL

State of New York, County of New York, ss.:

JAMES BURNS being duly sworn, says that on the 14 day of MAR. 1977, he served the annexed BRIEF OF N.Y.C. upon ABNER W. SIBAL Esq., the attorney for the EQUAL-EMPLOYMENT-COMM herein by depositing a copy of the same, inclosed in a postpaid wrapper in a post office box situated at Chambers and Centre Streets, in the Borough of Manhattan, City of New York, regularly maintained by the government of the United States in said city directed to the said attorney at No. 127 - N 4th St. in the ~~Borough~~ of PHILADELPHIA, ~~City~~ of New York, being the address within the State theretofore designated by him for that purpose.

Sworn to before me, this
14 day of MAR. 1977

BRUCE S. GARNER
Commissioner of Deeds
City of New York - No. 4-1786
Commission Expires May 1, 1978

James Burns

Bruce Garner

Form 323-50M-701067(75) 346

STATE OF NEW YORK :
COUNTY OF NEW YORK : SS.:

BRIAN SUGDEN

being duly sworn, says that on the 14 day of MAR. 1977 at No. 1 - PENN-PLAZA in the Borough of MAN'H in NEW YORK CITY, he served a copy of the annexed BRIEF-OF-N.Y.C. upon SOL - BOGER Esq. the Attorney for the OPPOSING - ATTY in the within entitled action, by delivering a copy of the same to a person in charge of said Attorney's office, and leaving the same with him.

Sworn to before me, this 14 day of MAR. 1977

JAMES BURNS
Commissioner of Deeds
City of New York - No. 4-1787
Commission Expires May 1, 1978

James Burns

Brian Sugden